

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CAPE BENAT NAVIGATION, INC.

Plaintiff,

08-cv-05501 (DC)

-against-

**MOTION TO INTERVENE**

PROGETRA S.A.

Defendant.  
-----X

PLEASE TAKE NOTICE THAT, upon the annexed intervening complaint and pursuant to Local Admiralty Rule E.2, Federal Admiralty Rule E(4)(f), and Rule 24 of the Federal Rules of Civil Procedure:

1. Kavanagh Maloney & Osnato LLP ("KMO"), a New York law firm and limited liability partnership located at 415 Madison Avenue, New York, NY, moves this Court, before the Honorable Denny Chin, United States District Judge, at a time and place as determined by the Court, for leave to intervene in this action and to file the intervening complaint attached hereto as Exhibit 1.

2. By its complaint filed June 18, 2008, Plaintiff alleged that it had an admiralty and maritime claim against Defendant Progetra.

3. Pursuant to Federal Admiralty Rule B, on July 28, 2008, this Court (Chin, J.) issued an Order in this case directing the Clerk to re-issue a maritime attachment order concerning Progetra in an amount up to \$100,000.00.

4. Thereafter, on or about August 1, 2008, pursuant to Rule B, an electronic funds transfer ("EFT") attachment occurred in the amount of \$16,292.27 (the "August 1

Attachment"). This sum was in no way an asset of Defendant Progetra. It was an asset of KMO and KMO therefore moves for intervention.

5. Pursuant to Local Admiralty Rule E.2 and Rule 24, KMO claims the August 1 Attachment in the full amount of \$16,292.27, plus any available interest, and KMO is so situated that disposing of this action without KMO may as a practical matter impair or impede KMO's ability to protect its interest.

6. Pursuant to Local Admiralty Rule E.2 and Rule 24(c), the grounds for KMO's intervention are as follows:

(a) the August 1 Attachment concerned an EFT payment made by KMO's Austrian banking client Raiffeisen Zentralbank Oesterreich AG ("RZB"), directly to KMO at KMO's account in this District at Citibank;

(b) the attached August 1 EFT to KMO concerned the payment of KMO's legal services in a case entitled *Petraco Oil Co. Ltd. v. Progetra S.A.*, 08-cv-03115 (PAC). That case is currently pending in this District before Judge Crotty. In *Petraco*, KMO represented RZB as an intervenor, and in no way represented Progetra;

(c) on August 1, 2008, RZB attempted to pay its KMO bill by a routine EFT to KMO's bank, namely by EFT to Citibank in Manhattan. For purposes of identification, RZB labeled its EFT to KMO as "Petraco v. Progetra";

(d) Because of the identification label attached to the August 1 EFT, the EFT was attached. KMO has an interest in this case as the underlying EFT payment to KMO's account at Citibank was a simple payment of a legal bill related to work performed for RZB by KMO in the *Petraco* matter before Judge Crotty;

(e) RZB was the originator of the August 1 EFT and KMO the recipient, and defendant Progetra has no interest in the August 1 EFT in any way.

7. Other grounds for KMO's intervention are that, as outlined in the accompanying Complaint setting out the claim for which intervention is sought: (1) KMO respectfully requests a prompt hearing pursuant to Admiralty Rule E(4)(f) and Local Admiralty Rule E.1, such that the attachment can be vacated and the attached EFT amount (\$16,292.27) transferred to KMO's account at Citibank in this District.

Date: August 14, 2008



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# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CAPE BENAT NAVIGATION INC.

Plaintiff,

08-cv-05501 (DC)

-against-

**INTERVENING COMPLAINT**

PROGETRA S.A.

Defendant.  
-----X

Intervenor, Kavanagh Maloney & Osnato LLP ("KMO"), a New York law firm and limited liability partnership, as and for its intervening complaint, alleges as follows:

1. By its complaint filed June 18, 2008, Plaintiff alleged that it had an admiralty and maritime claim against Defendant Progetra S.A. ("Progetra").
2. Pursuant to Federal Admiralty Rule B, on July 28, 2008, this Court (Chin, J.) issued an Order directing the Clerk to re-issue a maritime attachment in this case in an amount up to \$100,000.00.
4. Thereafter, pursuant to Rule B, on or about August 1, 2008, an electronic funds transfer ("EFT") attachment occurred in the amount of \$16,292.27. Such amount belonged entirely to KMO and KMO therefore intervenes.
5. Pursuant to Local Admiralty Rule E.2 and Rule 24, KMO claims a full interest in the attached EFT in the full amount of \$16,292.27, plus all available interest, and KMO is so situated that disposing of this action without KMO may as a practical matter impair or impede KMO's ability to protect its interest.

6. The EFT attachment concerned a payment made by KMO's Austrian banking client Raiffeisen Zentralbank Oesterreich AG ("RZB") to KMO at KMO's Citibank account in this District.

7. RZB's wire transfer to KMO concerned RZB's payment of KMO's legal bill in a case entitled *Petraco Oil Co. Ltd. v. Progetra SA*, 08-cv-03115 (PAC). That case is currently pending in this District before Judge Crotty. In *Petraco*, KMO represented RZB as an intervenor, and in now way represented Progetra.

8. For purposes of payment identification, RZB labeled its August 1, 2008 EFT to KMO, in the amount of \$16,292.27, as "Petraco v. Progetra." The reference number of the August 1, 2008 EFT to KMO was A0466101/01808.

9. Because of this label attached to the August 1 EFT, the EFT was attached pursuant to Judge Chin's July 28 order in this case. The underlying August 1, 2008 EFT payment to KMO's account at Citibank in this District was a simple payment of a legal bill related to work performed for RZB by KMO in the *Petraco* matter before Judge Crotty.

10. KMO was at all times the legal and beneficial owner of the attached \$16,292.27 EFT amount.

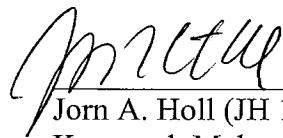
11. The attached \$16,292.27 EFT amount was not being wired to Defendant Progestra. Progestra did not have any rights in such attached EFT amount. The attached EFT amount was in no way an asset of Progestra.

12. Progetra's property cannot be found in this District.

WHEREFORE, Intervenor KMO, prays:

- a. for a prompt hearing pursuant to Admiralty Rule E(4)(f) and Local Admiralty Rule E.1, such that the August 1, 2008 EFT attachment in this case, in the amount of \$16,292.27, can be vacated, because the August 1, 2008 EFT is in no way Progetra's property.
- b. that the attached August 1, 2008 EFT amount, \$16,292.27, currently in the hands of the marshal or a substitute custodian, be transferred/returned to KMO, with all available interest, such that KMO can be returned to the position it would have been in, had the August 1, 2008 attachment not occurred, and the underlying EFT completed to Citibank as intended; and
- c. for such other, further and different relief as this Court may deem just and proper.

Dated: August 14, 2008



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